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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/796,844 | 03/09/2004 | John H. Koester | 165P005US01 | 2427 |
| 23322 | 7590 | 07/03/2007 | | |
| IPLM GROUP, P.A. POST OFFICE BOX 18455 MINNEAPOLIS, MN 55418 | | | EXAMINER SMITH, MATTHEW J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3637 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,844

Applicant(s)

KOESTER, JOHN H.

Examiner

Matthew J. Smith

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2Jun04.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Brewer (3429084).

Brewer discloses a head joint drainage device to allow drainage of moisture from a head joint meeting a horizontal interruption of a structure formed with building products or bricks 15 set with mortar forming a mortar joint 16 between adjacent bricks comprising: a spacer 11, 12 having a solid top portion, a length approximately equal to a depth of the bricks and a width approximately equal to the joint width; the spacer blocking the mortar from reaching the horizontal interruption; the spacer having a side portion to keep the top a distance away from the horizontal interruption, the distance allowing moisture drainage from the head joint; and the head joint drainage device is formed into sections, 11, 12 each of the sections having a length selected so that a length of an integral number of the sections is approximately equal to the depth of the plurality of modular building materials.

Claims 11-13 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Atkins (5598673).

Atkins discloses a wall system for a structure having a head joint meeting a horizontal interruption in a wall having a veneer 12, comprising: an angle 26 positioned at the horizontal interruption; bricks 18 set on the angle forming the veneer; mortar 44 set between the adjacent bricks forming a mortar joint; a spacer 28, positioned on the angle between adjacent bricks, forming a moisture drainage channel between the bricks and between the mortar and the angle; the spacer having a solid top portion, a length approximately equal to a depth of the plurality of building products and a width approximately equal to a width of the mortar joint; the spacer adapted to block the mortar from reaching the angle; and the spacer having a side portion to keep the top a distance away from the angle, the distance allowing moisture drainage from the head joint.

This reference also discloses a method of providing drainage of moisture from a head joint meeting a horizontal interruption of a wall having a veneer 12 constructed from bricks 18 set with mortar 44 forming a mortar joint between adjacent bricks comprising: placing one brick on an angle at the horizontal interruption; setting a spacer 28 on the angle adjacent the brick; applying the mortar to the brick forming the mortar joint; placing another brick on the angle adjacent to the spacer; the spacer having a solid top portion, a length approximately equal to a depth of the plurality of building products, and a width approximately equal to a width of the mortar joint; the spacer blocking the mortar from reaching the angle; and the spacer having a side portion and keeping the top portion a distance away from the angle, the distance allowing moisture drainage from the head joint.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5, 7-9, 14-16, 18-20, 25-27, and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkins in view of Peterson (2483560).

Atkins discloses the invention substantially as claimed but not a two v-shaped side portions angled back from the front edge with equal heights, a transverse groove, or the claimed color.

Peterson shows a spacer with two v-shaped side portions angled back from the front edge with equal heights and a transverse groove to separate sections.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to fabricate the Atkins spacer drain per the design shown by Peterson in order to insure proper thickness of mortar.

It would have been further obvious to fabricate the modified spacer drain approximately the same color as the mortar in order to be less noticeable.

Claims 10, 21, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer or Atkins.

Brewer and Atkins disclose the invention substantially as claimed but not a head joint drainage device being a color that approximates a color of said mortar.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to fabricate the spacer a color to approximate the color of the mortar since the color of the device does not affect the function and is merely aesthetic.

Claims 17 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atkins in view of Brewer.

Atkins discloses the invention substantially as claimed but not the spacer formed into sections, each section having a length selected so that a length of an integral number of sections is approximately equal to the depth of a brick.

Brewer depicts a spacer is formed into sections 11, 12, each section having a length selected so that a length of an integral number of the sections is approximately equal to the depth of the bricks.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to fabricate the Atkins weeper similar to the Brewer design in order to minimize insect infestation

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Joppich (2782464), Snyder et al. (6202366), and Krogstad (6662504) present a vent.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Smith whose telephone number is 571-272-7034. The examiner can normally be reached on T-F, 8-3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lanna Mai
Supervisory Patent Examiner
Art Unit 3637



MJS *MJS*
15 May 2007